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# HOUSE BILL No. 1775

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-30-16; IC 36-7-9.

**Synopsis:** Unsafe buildings. Establishes procedures for the forfeiture of real property containing unsafe buildings to a county or municipality when the owner of the unsafe building willfully refuses to comply with an order to remove the unsafe building. Increases the civil penalty that may be imposed for the willful refusal to comply with an order to remove an unsafe building from \$1,000 to \$15,000. Provides that forfeiture is in the alternative to the civil penalty. Provides for the disposition of property acquired by forfeiture.

**Effective:** July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1775

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 32-30-16 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]:  
4 **Chapter 16. Actions for Forfeiture of Real Property Containing**  
5 **an Unsafe Building**  
6 **Sec. 1. This chapter applies only to a forfeiture action**  
7 **commenced as a result of a willful failure to comply with an order**  
8 **issued under IC 36-7-9-5(7).**  
9 **Sec. 2. The definitions in IC 36-7-9 apply throughout this**  
10 **chapter.**  
11 **Sec. 3. (a) If the hearing authority issues an order authorizing**  
12 **the enforcement authority to commence an action under this**  
13 **chapter, the enforcement authority in a county in which the unsafe**  
14 **building is located may bring an action in the name of the**  
15 **authority's municipality or county for the forfeiture of the unsafe**  
16 **building and the tract of land on which the unsafe building is**  
17 **situated.**

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(b) An action for forfeiture may be brought in any circuit or superior court in a county in which the unsafe building is located.

(c) Upon a showing by a preponderance of the evidence that the building in question is unsafe and that the person subject to an order issued under IC 36-7-9-5(7) has willfully refused to comply with the order, the court shall, subject to the right, title, or interest of record of any other party in the property determined under section 4 of this chapter, order the property forfeited to the county or municipality.

(d) The court shall order forfeitures and dispositions under this section:

(1) with due provision for the rights of innocent persons; and

(2) as provided under section 4 of this chapter.

**Sec. 4.** When an action is filed under section 3 of this chapter, the enforcement authority may move for an order to have property subject to forfeiture seized by a law enforcement agency. The judge shall issue such an order upon a showing of prima facie evidence that the building is unsafe and that a person subject to an order issued under IC 36-7-9-5(7) has willfully refused to comply with the order.

**Sec. 5. (a)** Property subject to forfeiture under this chapter shall be seized by a law enforcement officer upon a court order issued under section 4 of this chapter.

(b) When property is seized under subsection (a), pending forfeiture and final disposition, the law enforcement officer making the seizure may place the property under seal.

(c) Property seized under subsection (a) is not subject to replevin but is considered to be in the custody of the law enforcement officer making the seizure, subject only to order of the court.

(d) If property is seized under subsection (a), the enforcement authority shall serve, within thirty (30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, notice of seizure upon each person whose right, title, or interest is of record in the county recorder's office or other office authorized to receive or record real property ownership interests.

(e) The person whose right, title, or interest is of record may at any time file a complaint seeking:

(1) replevin;

(2) foreclosure; or

(3) another appropriate remedy;

to which the state may answer in forfeiture within the appropriate

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1 statutory period. The court shall promptly set the matter for a  
 2 hearing, and, in the case of replevin or foreclosure, the court shall  
 3 set the hearing as provided by the applicable statutory provisions.

4 **Sec. 6. (a) If a person holding a valid lien, mortgage, security**  
 5 **interest, or interest under a conditional sales contract did not know**  
 6 **that an unsafe building was situated on the property, the court**  
 7 **shall determine whether the secured interest is equal to or greater**  
 8 **than the appraised value of the property.**

9 **(b) Appraised value is to be determined as of the date of**  
 10 **judgment on a wholesale basis by:**

11 **(1) agreement between the secured party and the enforcement**  
 12 **authority; or**

13 **(2) the inheritance tax appraiser for the county in which the**  
 14 **action is brought.**

15 **(c) If the amount due to the secured party is equal to or greater**  
 16 **than the appraised value of the property, the court shall order the**  
 17 **property released to the secured party.**

18 **(d) If the amount due the secured party is less than the**  
 19 **appraised value of the property, the holder of the interest may pay**  
 20 **into the court an amount equal to:**

21 **(1) the owner's equity, which shall be the difference between**  
 22 **the appraised value and the amount of the lien, mortgage,**  
 23 **security interest, or interest under a conditional sales**  
 24 **contract; plus**

25 **(2) the amount of the costs set forth in IC 36-7-9-12.**

26 **Upon payment, the county or municipality shall relinquish all**  
 27 **claims to the property.**

28 **SECTION 2. IC 36-7-9-7 IS AMENDED TO READ AS FOLLOWS**  
 29 **[EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section does not apply**  
 30 **to an order issued under section 5(7) of this chapter.**

31 **(b) A hearing must be held relative to each order of the enforcement**  
 32 **authority, except for an order issued under section 5(a)(2), 5(a)(3), or**  
 33 **5(a)(4) of this chapter. An order issued under section 5(a)(2), 5(a)(3),**  
 34 **or 5(a)(4) of this chapter becomes final ten (10) days after notice is**  
 35 **given, unless a hearing is requested before the ten (10) day period ends**  
 36 **by a person holding a fee interest, life estate interest, or equitable**  
 37 **interest of a contract purchaser in the unsafe premises. The hearing**  
 38 **shall be conducted by the hearing authority.**

39 **(b) (c) The hearing shall be held on a business day no earlier than**  
 40 **ten (10) days after notice of the order is given. The hearing authority**  
 41 **may, however, take action at the hearing, or before the hearing if a**  
 42 **written request is received by the enforcement authority not later than**

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1 five (5) days after notice is given, to continue the hearing to a business  
 2 day not later than fourteen (14) days after the hearing date shown on  
 3 the order. Unless the hearing authority takes action to have the  
 4 continued hearing held on a definite, specified date, notice of the  
 5 continued hearing must be given to the person to whom the order was  
 6 issued at least five (5) days before the continued hearing date, in the  
 7 manner prescribed by section 25 of this chapter. If the order being  
 8 considered at the continued hearing was served by publication, it is  
 9 sufficient to give notice of the continued hearing by publication unless  
 10 the enforcement authority has received information in writing that  
 11 enables it to make service under section 25 of this chapter by a method  
 12 other than publication.

13 ~~(c)~~ (d) The person to whom the order was issued, any person having  
 14 a substantial property interest in the unsafe premises that are the  
 15 subject of the order, or any other person with an interest in the  
 16 proceedings may appear in person or by counsel at the hearing. Each  
 17 person appearing at the hearing is entitled to present evidence,  
 18 cross-examine opposing witnesses, and present arguments.

19 ~~(d)~~ (e) At the conclusion of any hearing at which a continuance is  
 20 not granted, the hearing authority may make findings and take action  
 21 to:

- 22 (1) affirm the order;
- 23 (2) rescind the order; or
- 24 (3) modify the order, but unless the person to whom the order was  
 25 issued, or counsel for that person, is present at the hearing, the  
 26 hearing authority may modify the order in only a manner that  
 27 makes its terms less stringent.

28 In addition to affirming the order, in those cases in which the hearing  
 29 authority finds that there has been a willful failure to comply with the  
 30 order, the hearing authority may impose a civil penalty in an amount  
 31 not to exceed one thousand dollars (\$1,000). The effective date of the  
 32 civil penalty may be postponed for a reasonable period, after which the  
 33 hearing authority may order the civil penalty reduced or stricken if the  
 34 hearing authority is satisfied that all work necessary to fully comply  
 35 with the order has been done. For purposes of an appeal under section  
 36 8 of this chapter or enforcement of an order under section 17 of this  
 37 chapter, action of the hearing authority is considered final upon the  
 38 affirmation of the order, even though the hearing authority may retain  
 39 jurisdiction for the ultimate determination of a fine.

40 ~~(e)~~ (f) If, at a hearing, a person to whom an order has been issued  
 41 requests an additional period to accomplish action required by the  
 42 order, and shows good cause for this request to be granted, the hearing

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1 authority may grant the request. However, as a condition for allowing  
 2 the additional period, the hearing authority may require that the person  
 3 post a performance bond to be forfeited if the action required by the  
 4 order is not completed within the additional period.

5 ~~(f)~~ **(g)** The board or commission having control over the department  
 6 shall, at a public hearing, after having given notice of the time and  
 7 place of the hearing by publication in accordance with IC 5-3-1, adopt  
 8 a schedule setting forth the maximum amount of performance bonds  
 9 applicable to various types of ordered action. The hearing authority  
 10 shall use this schedule to fix the amount of the performance bond  
 11 required under subsection ~~(e)~~ **(f)**.

12 ~~(g)~~ **(h)** The record of the findings made and action taken by the  
 13 hearing authority at the hearing shall be available to the public upon  
 14 request. However, neither the enforcement authority nor the hearing  
 15 authority is required to give any person notice of the findings and  
 16 action.

17 ~~(h)~~ **(i)** A civil penalty under subsection ~~(d)~~ **(e)** may be collected in  
 18 the same manner as costs under section 13 of this chapter. The amount  
 19 of the civil penalty that is collected shall be deposited in the unsafe  
 20 building fund.

21 SECTION 3. IC 36-7-9-7.5 IS ADDED TO THE INDIANA CODE  
 22 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 23 1, 2003]: **Sec. 7.5. (a) This section applies only to an order issued**  
 24 **under section 5(7) of this chapter.**

25 **(b) A hearing must be held relative to an order of the**  
 26 **enforcement authority described in subsection (a). The hearing**  
 27 **shall be conducted by the hearing authority.**

28 **(c) The hearing shall be held on a business day not earlier than**  
 29 **ten (10) days after notice of the order is given. The hearing**  
 30 **authority may, however, take action at the hearing, or before the**  
 31 **hearing if a written request is received by the enforcement**  
 32 **authority not later than five (5) days after notice is given, to**  
 33 **continue the hearing to a business day not later than fourteen (14)**  
 34 **days after the hearing date shown on the order. Unless the hearing**  
 35 **authority takes action to have the continued hearing held on a**  
 36 **specified date, notice of the continued hearing must be given to the**  
 37 **person to whom the order was issued at least five (5) days before**  
 38 **the continued hearing date, in the manner prescribed by section 25**  
 39 **of this chapter. If the order being considered at the continued**  
 40 **hearing was served by publication, it is sufficient to give notice of**  
 41 **the continued hearing by publication unless the enforcement**  
 42 **authority has received information in writing that enables it to**



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1 make service under section 25 of this chapter by a method other  
2 than publication.

3 (d) The person to whom the order was issued, any person having  
4 a substantial property interest in the unsafe premises that are the  
5 subject of the order, or any other person with an interest in the  
6 proceedings may appear in person or by counsel at the hearing.  
7 Each person appearing at the hearing is entitled to present  
8 evidence, cross-examine opposing witnesses, and present  
9 arguments.

10 (e) At the conclusion of any hearing at which a continuance is  
11 not granted, the hearing authority may make findings and take  
12 action to:

13 (1) affirm the order;

14 (2) rescind the order; or

15 (3) modify the order, but, unless the person to whom the order  
16 was issued, or counsel for that person, is present at the  
17 hearing, the hearing authority may modify the order in only  
18 a manner that makes its terms less stringent.

19 (f) In addition to affirming the order in those cases in which the  
20 hearing authority finds that there has been a willful failure to  
21 comply with the order, the hearing authority may:

22 (1) impose a civil penalty not to exceed fifteen thousand  
23 dollars (\$15,000); or

24 (2) issue an order authorizing the enforcement authority to  
25 commence a forfeiture action under IC 32-30-16.

26 (g) The effective date of a civil penalty imposed under  
27 subsection (f)(1) may be postponed for a reasonable period, after  
28 which the hearing authority may order the civil penalty reduced or  
29 stricken if the hearing authority is satisfied that all work necessary  
30 to fully comply with the order has been done. For purposes of an  
31 appeal under section 8 of this chapter or enforcement of an order  
32 under section 17 of this chapter, action of the hearing authority is  
33 considered final upon the affirmation of the order, even though the  
34 hearing authority may retain jurisdiction for the ultimate  
35 determination of a fine.

36 (h) If, at a hearing, a person to whom an order has been issued  
37 requests an additional period to accomplish action required by the  
38 order and shows good cause for the request to be granted, the  
39 hearing authority may grant the request. However, as a condition  
40 for allowing the additional period, the hearing authority may  
41 require that the person post a performance bond to be forfeited if  
42 the action required by the order is not completed within the



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1 additional period.

2 (i) The board or commission having control over the  
3 department shall, at a public hearing, after having given notice of  
4 the time and place of the hearing by publication in accordance with  
5 IC 5-3-1, adopt a schedule setting forth the maximum amount of  
6 performance bonds applicable to various types of ordered action.  
7 The hearing authority shall use this schedule to fix the amount of  
8 the performance bond required under subsection (h).

9 (j) The record of the findings made and action taken by the  
10 hearing authority at the hearing shall be available to the public  
11 upon request. However, neither the enforcement authority nor the  
12 hearing authority is required to give any person notice of the  
13 findings and action.

14 (k) A civil penalty imposed under subsection (f)(1) may be  
15 collected in the same manner as costs under section 13 of this  
16 chapter. The amount of the civil penalty that is collected shall be  
17 deposited in the unsafe building fund.

18 SECTION 4. IC 36-7-9-8 IS AMENDED TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) An action taken under section  
20 ~~7(d)~~ **7(e), 7.5(e), or 7.5(f)(1)** of this chapter is subject to review by the  
21 circuit or superior court of the county in which the unsafe premises are  
22 located, on request of:

- 23 (1) any person who has a substantial property interest in the
- 24 unsafe premises; or
- 25 (2) any person to whom that order was issued.

26 (b) A person requesting judicial review under this section must file  
27 a verified complaint including the findings of fact and the action taken  
28 by the hearing authority. The complaint must be filed within ten (10)  
29 days after the date when the action was taken.

30 (c) An appeal under this section is an action de novo. The court may  
31 affirm, modify, or reverse the action taken by the hearing authority.

32 SECTION 5. IC 36-7-9-29 IS ADDED TO THE INDIANA CODE  
33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
34 1, 2003]: Sec. 29. (a) **This section applies to real property acquired**  
35 **by a county or municipality under IC 32-30-16.**

36 (b) **The county or municipality may dispose of the real property:**

- 37 (1) **under an urban homesteading program under IC 36-7-17;**
- 38 (2) **under IC 36-1-11;**
- 39 (3) **by transferring title to a redevelopment commission at no**  
40 **cost to the commission for sale or grant under**  
41 **IC 36-7-14-22.2, IC 36-7-15.1-15.1, or IC 36-7-15.1-15.2; or**  
42 (4) **under section 30 of this chapter.**



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SECTION 6. IC 36-7-9-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 30. (a) This section applies to real property acquired by a county or municipality under IC 32-30-16.**

**(b) The executive of a county or municipality may:**

**(1) identify the property described under subsection (a) that the county or municipality desires to transfer to a nonprofit corporation for use for the public good; and**

**(2) set a date, time, and place for a public hearing to consider the transfer of the property to a nonprofit corporation.**

**(c) Notice of the property identified under subsection (b) and the date, time, and place for the hearing on the proposed transfer of the property on the list shall be published in accordance with IC 5-3-1. The notice must include a description of the property by:**

**(1) legal description; and**

**(2) parcel number or street address, or both.**

**The notice must specify that the county or municipality will accept applications submitted by nonprofit corporations as provided in subsection (e) and will hear any opposition to a proposed transfer.**

**(d) After the hearing set under subsection (b), the executive shall make a final determination concerning:**

**(1) the properties that are to be transferred to a nonprofit corporation;**

**(2) the nonprofit corporation to which each property is to be transferred; and**

**(3) the terms and conditions of the transfer.**

**(e) To be eligible to receive property under this section, a nonprofit corporation must file an application with the executive of the county or municipality. The application must state the property that the corporation desires to acquire, the use to be made of the property, and the time anticipated for implementation of the use. The application must be accompanied by documentation verifying the nonprofit status of the corporation and must be signed by an officer of the corporation. If more than one (1) application for a single property is filed, the executive shall determine which application is to be accepted based on the benefit to be provided to the public and the neighborhood and the suitability of the stated use for the property and the surrounding area.**

**(f) After the hearing set under subsection (b) and the final determination of properties to be transferred under subsection (d), the county commissioners shall cause all delinquent taxes, special**

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1 assessments, penalties, and interest to be removed from the tax  
2 duplicate and order the county auditor to prepare a deed  
3 transferring the property to the nonprofit corporation. The deed  
4 must provide for:

- 5 (1) the use to be made of the property;  
6 (2) the time within which the use must be implemented and  
7 maintained;  
8 (3) any other terms and conditions that are established by the  
9 executive of the county or municipality; and  
10 (4) the reversion of the property to the county or municipality  
11 if the grantee nonprofit corporation fails to comply with the  
12 terms and conditions.

13 If the grantee nonprofit corporation fails to comply with the terms  
14 and conditions of the transfer and title to the property reverts to  
15 the county or municipality, the property must be disposed of under  
16 this section.

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